

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PACIFIC BELLS ENTERPRISES, INC., an
Oregon corporation; KANEKOA
ENTERPRISES, INC., a Washington
corporation; BORDER EXPRESS, LLC, a
Washington limited liability company; and
PACIFIC BELLS, INC., an Oregon
corporation,

Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION,
an Oregon corporation,

Defendant.

Case No. C03-5396 RBL

ORDER DENYING PLAINTIFFS'
MOTION TO ENFORCE JUDGMENT

This matter comes before the court on Plaintiffs' motion to enforce judgment. (Dkt. No. 123). Plaintiffs seeks to enforce this court's earlier money and declaratory judgment (Dkt. No. 97) because Defendant U.S. Bank neither asked this court for a stay nor obtained a supersedeas bond pursuant to Fed R. Civ. P. 62(d) while it appealed Plaintiffs' favorable verdict. (Dkt. No. 124 at 3). Defendant responds that 12 U.S.C. § 91 prohibits enforcing Plaintiffs' judgment pending appeal.

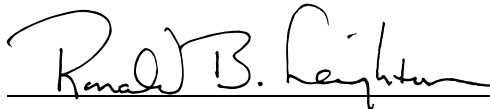
1 12 U.S.C. § 91 prohibits the issuance of an attachment, injunction, or execution against a national
2 bank before final judgment in a suit, action, or proceeding.¹ This provision applies to Federal Court
3 actions. *See United States v. Lemaire*, 826 F.2d 387 (5th Cir. 1987). Final judgment, as it relates to 12
4 U.S.C. § 91, means judgment on the merits [that] is no longer subject to examination on appeal. *Id.* at
5 390. Additionally, Section 91 applies to both solvent and insolvent banks. *See Third National Bank in*
6 *Nashville v. Impac Ltd.*, 432 U.S. 312, 319 (1977).

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8 Here, there is no final judgment because Defendants are currently appealing the jury's adverse
9 verdict. And as Defendants correctly state, 12 U.S.C. § 91 effectively provides an automatic stay pending
10 appeal. While this statute is unique and dated, it is still good law. This court's money and declaratory
11 judgment (Dkt. No. 97), however, pending the appeal's outcome, remains unchanged.

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13 Accordingly, the court **DENIES** Plaintiffs' motion to enforce judgment.

14 **IT IS SO ORDERED.**

15 DATED this 10th day of October, 2006.

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20 RONALD B. LEIGHTON
21 UNITED STATES DISTRICT JUDGE
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23 ¹ 12 U.S.C. § 91 provides in full:

24 "All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any
25 national banking association, or of deposits to its credit; all assignments of mortgages,
26 sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion,
27 or other valuable thing for its use, or for the use of any of its shareholders or creditors; and
28 all payments of money to either, made after the commission of an act of insolvency, or in
contemplation thereof, made with a view to prevent the application of its assets in the manner
prescribed by Chapter 4 of Title 62 of the Revised Statutes, or with a view to the preference
of one creditor to another, except in payment of its circulating notes, shall be utterly null and
void; and no attachment, injunction, or execution, shall be issued against such association or
its property before final judgment in any suit, action, or proceeding, in any State, county, or
municipal court."